

Senate Bill No. 646

Passed the Senate August 30, 2011

Secretary of the Senate

Passed the Assembly August 25, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 25214.1, 25214.3, and 25214.3.1 of the Health and Safety Code, relating to toxics.

LEGISLATIVE COUNSEL'S DIGEST

SB 646, Pavley. Toxics: enforcement: lead and cadmium jewelry.

(1) Existing law prohibits the manufacturing, shipping, selling, or offering for sale of jewelry, as defined, for retail sale in the state, unless the jewelry is made entirely from specified materials. Existing law also prohibits any person from taking those actions with regard to children's jewelry, as defined, unless the children's jewelry is made entirely of specified materials. Existing law, for purposes of those provisions, defines among other terms, "amended consent judgment" and "jewelry."

Existing law excludes a person who violates those prohibitions from the criminal penalties otherwise imposed pursuant to the hazardous waste control laws and instead provides that a person who violates those prohibitions is liable for a civil penalty not to exceed \$2,500 per day for each violation. Existing law specifies that a party that is a signatory to an amended consent judgment, or a party to a consent judgment entered in a specified consolidation action that contains certain terms is deemed to be in compliance with those provisions. Existing law requires these collected civil penalties to be deposited in the Hazardous Waste Control Account, for expenditure by the Department of Toxic Substances Control, upon appropriation by the Legislature, to implement and enforce those prohibitions.

This bill would delete those provisions defining the term "amended consent judgment," and those provisions specifying that a party that is a signatory to the above-described amended consent judgment or consent judgment enacted in a specified consolidation action is deemed to be in compliance with those provisions. The bill would also revise the definition of the term "jewelry."

(2) Existing law requires a manufacturer or supplier to provide a specified certification to a person who sells or offers for sale that manufacturer's or supplier's jewelry, upon the request of that

person, or to display the certification prominently on the shipping container or on the packaging of jewelry.

This bill would instead require a manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes to prepare this certification and would delete the condition that the certification be provided on request, thereby requiring the manufacturer or supplier to either provide the certification to a person who sells or offers for sale that manufacturer's or supplier's jewelry or to display the certification prominently on the shipping container or on the packaging of jewelry.

(3) Existing law imposes criminal penalties upon a manufacturer or supplier of jewelry who knowingly and intentionally manufactures, ships, sells, offers for sale, or offers for promotional purposes jewelry containing lead or cadmium in violation of those provisions or who knowingly and with intent to deceive falsifies any document or certificate required to be kept or produced pursuant to those provisions.

This bill would impose a state-mandated local program by creating a new crime with regard to the sale, or offering for sale, of this jewelry and the preparation of the certification.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 25214.1 of the Health and Safety Code is amended to read:

25214.1. For purposes of this article, the following definitions shall apply:

(a) "Body piercing jewelry" means any part of jewelry that is manufactured or sold for placement in a new piercing or a mucous membrane, but does not include any part of that jewelry that is not placed within a new piercing or a mucous membrane.

(b) "Children" means children six years of age and younger.

(c) "Children's jewelry" means jewelry that is made for, marketed for use by, or marketed to, children. For purposes of this

article, children's jewelry includes, but is not limited to, jewelry that meets any of the following conditions:

(1) Represented in its packaging, display, or advertising, as appropriate for use by children.

(2) Sold in conjunction with, attached to, or packaged together with other products that are packaged, displayed, or advertised as appropriate for use by children.

(3) Sized for children and not intended for use by adults.

(4) Sold in any of the following:

(A) A vending machine.

(B) Retail store, catalog, or online Internet Web site, in which a person exclusively offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(C) A discrete portion of a retail store, catalog, or online Internet Web site, in which a person offers for sale products that are packaged, displayed, or advertised as appropriate for use by children.

(d) (1) "Class 1 material" means any of the following materials:

(A) Stainless or surgical steel.

(B) Karat gold.

(C) Sterling silver.

(D) Platinum, palladium, iridium, ruthenium, rhodium, or osmium.

(E) Natural or cultured pearls.

(F) Glass, ceramic, or crystal decorative components, including cat's eye, cubic zirconia, including cubic zirconium or CZ, rhinestones, and cloisonne.

(G) A gemstone that is cut and polished for ornamental purposes, except as provided in paragraph (2).

(H) Elastic, fabric, ribbon, rope, or string, unless it contains intentionally added lead and is listed as a class 2 material.

(I) All natural decorative material, including amber, bone, coral, feathers, fur, horn, leather, shell, or wood, that is in its natural state and is not treated in a way that adds lead.

(J) Adhesive.

(2) The following gemstones are not class 1 materials: aragonite, bayldonite, boleite, cerussite, crocoite, ekanite, linarite, mimetite, phosgenite, samarskite, vanadinite, and wulfenite.

(e) "Class 2 material" means any of the following materials:

(1) Electroplated metal that meets the following standards:

(A) On and before August 30, 2009, a metal alloy with less than 10 percent lead by weight that is electroplated with suitable under and finish coats.

(B) On and after August 31, 2009, a metal alloy with less than 6 percent lead by weight that is electroplated with suitable under and finish coats.

(2) Unplated metal with less than 1.5 percent lead that is not otherwise listed as a class 1 material.

(3) Plastic or rubber, including acrylic, polystyrene, plastic beads and stones, and polyvinyl chloride (PVC) that meets the following standards:

(A) On and before August 30, 2009, less than 0.06 percent (600 parts per million) lead by weight.

(B) On and after August 31, 2009, less than 0.02 percent (200 parts per million) lead by weight.

(4) A dye or surface coating containing less than 0.06 percent (600 parts per million) lead by weight.

(f) “Class 3 material” means any portion of jewelry that meets both of the following criteria:

(1) Is not a class 1 or class 2 material.

(2) Contains less than 0.06 percent (600 parts per million) lead by weight.

(g) “Component” means any part of jewelry.

(h) “Jewelry” means any of the following:

(1) Any of the following ornaments worn by a person:

(A) An anklet.

(B) Arm cuff.

(C) Bracelet.

(D) Brooch.

(E) Chain.

(F) Crown.

(G) Cuff link.

(H) Hair accessory.

(I) Earring.

(J) Necklace.

(K) Pin.

(L) Ring.

(M) Tie clip.

(N) Body piercing jewelry.

(O) Jewelry placed in the mouth for display or ornament.

(2) Any bead, chain, link, pendant, or other component of an ornament specified in paragraph (1).

(3) A charm, bead, chain, link, pendant, or other attachment to shoes or clothing that can be removed and may be used as a component of an ornament specified in paragraph (1).

(4) A watch in which a timepiece is a component of an ornament specified in paragraph (1), excluding the timepiece itself if the timepiece can be removed from the ornament.

(i) (1) “Surface coating” means a fluid, semifluid, or other material, with or without a suspension of finely divided coloring matter, that changes to a solid film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.

(2) “Surface coating” does not include a printing ink or a material that actually becomes a part of the substrate, including, but not limited to, pigment in a plastic article, or a material that is actually bonded to the substrate, such as by electroplating or ceramic glazing.

SEC. 2. Section 25214.3 of the Health and Safety Code is amended to read:

25214.3. (a) Except as provided in Sections 25214.3.3 and 25214.3.4, a person who violates this article shall not be subject to criminal penalties imposed pursuant to this chapter and shall only be subject to the administrative or civil penalty specified in subdivision (b).

(b) (1) A person who violates this article shall be liable for an administrative or a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation. That administrative or civil penalty may be assessed and recovered in an administrative action filed with the Office of Administrative Hearings or in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of an administrative or a civil penalty for a violation of this article, the presiding officer or the court, as applicable, shall consider all of the following:

- (A) The nature and extent of the violation.
- (B) The number of, and severity of, the violations.
- (C) The economic effect of the penalty on the violator.
- (D) Whether the violator took good faith measures to comply with this article and the time these measures were taken.
- (E) The willfulness of the violator’s misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Administrative and civil penalties collected pursuant to this article shall be deposited in the Toxic Substances Control Account, for expenditure by the department, upon appropriation by the Legislature, to implement and enforce this article, except as provided in Section 25192.

(d) (1) For the purpose of administering and enforcing this article, an authorized representative of the department, upon obtaining consent or after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, may, upon presenting appropriate credentials and at a reasonable time, do any of the following:

(A) Enter a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold; enter a vehicle that is being used to transport, hold, or sell jewelry; or enter a place where jewelry is being held or sold.

(B) Inspect a factory, warehouse, establishment, vehicle, or place described in subparagraph (A), and all pertinent equipment, raw material, finished and unfinished materials, containers, and labeling in the factory, warehouse, establishment, vehicle, or place. In the case of a factory, warehouse, or establishment where jewelry is manufactured, packed, held, or sold, this inspection shall include any record, file, paper, process, control, and facility that has a bearing on whether the jewelry is being manufactured, packed, held, transported, sold, or offered for sale or for promotional purposes in violation of this article.

(2) (A) An authorized representative of the department may secure a sample of jewelry when taking an action authorized pursuant to this subdivision. If the representative obtains a sample prior to leaving the premises, he or she shall leave a receipt describing the sample obtained.

(B) The department shall return, upon request, a sample that is not destroyed during testing when the department no longer has any purpose for retaining the sample.

(C) A sample that is secured in compliance with this section and found to be in compliance with this article that is destroyed during testing shall be subject to a claim for reimbursement.

(3) An authorized representative of the department shall have access to all records of a carrier in commerce relating to the movement in commerce of jewelry, or the holding of that jewelry during or after the movement, and the quantity, shipper, and consignee of the jewelry. A carrier shall not be subject to the other provisions of this article by reason of its receipt, carriage, holding, or delivery of jewelry in the usual course of business as a carrier.

(4) An authorized representative of the department shall be deemed to have received implied consent to enter a retail establishment, for purposes of this section, if the authorized representative enters the location of that retail establishment where the public is generally granted access.

SEC. 3. Section 25214.3.1 of the Health and Safety Code is amended to read:

25214.3.1. (a) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare and, at the request of the department, submit to the department no more than 28 days after the date of the request, technical documentation or other information showing that the jewelry is in compliance with the requirements of this article.

(b) A manufacturer or supplier of jewelry that is sold, offered for sale, or offered for promotional purposes shall prepare a certification. This certification shall attest that the jewelry does not contain a level of lead or cadmium that prohibits the jewelry from being sold or offered for sale pursuant to this article.

(c) A manufacturer or supplier of jewelry sold or offered for promotional purposes in this state shall do either of the following:

(1) Provide the certification required by subdivision (b) to a person who sells or offers for sale that manufacturer's or supplier's jewelry.

(2) Display the certification required by subdivision (b) prominently on the shipping container or on the packaging of jewelry.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2011

Governor